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9 MATEO and CHRISTINA CORPUS

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
12

13 A.B.O. COMIX, KENNETH ROBERTS,
ZACHARY GREENBERG, RUBEN
14 GONZALEZ-MAGALLANES, DOMINGO
AGUILAR, KEVIN PRASAD, MALTI
15 PRASAD, and WUMI OLADIPO,

16 Plaintiffs,

17 v.

18 COUNTY OF SAN MATEO and
CHRISTINA CORPUS, in her official
19 capacity as Sheriff of San Mateo County,

20 Defendants.
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Case No. 3:23-cv-1865-JSC

**DEFENDANTS' ANSWER TO
PLAINTIFFS' AMENDED COMPLAINT
AND COUNTERCLAIMS**

1 Defendants County of San Mateo (the “County”) and Christina Corpus in her official
 2 capacity as Sheriff of San Mateo County (collectively “Defendants”) hereby answer the Amended
 3 Complaint for Injunctive and Declaratory Relief for Violation of Article I, § 2 and § 13 of the
 4 California Constitution (“Amended Complaint”) filed by Plaintiffs A.B.O. Comix, Kenneth
 5 Roberts, Zachary Greenberg, Ruben Gonzalez-Magallanes, Domingo Aguilar, Kevin Prasad,
 6 Malti Prasad, and Wumi Oladipo (collectively “Plaintiffs”) as follows:

7 Defendants generally deny each and every allegation of Plaintiffs’ Amended Complaint,
 8 except those allegations expressly admitted below. Defendants further deny that Plaintiffs are
 9 entitled to any relief from Defendants.

10 **INTRODUCTION**

11 1. Responding to the allegations set forth in Paragraph 1 of the Amended Complaint,
 12 Defendants admit in 2021 the County implemented a new mail policy (the “Mail Policy”) utilizing
 13 Smart Communications Holding, Inc.’s (“Smart”) technology to provide digital inmate
 14 communications services through a service generally referred to as “MailGuard.” Defendants
 15 admit that Smart is based in Florida. As to all other allegations set forth in this Paragraph,
 16 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 17 allegations, and on that basis, deny each and every one of them.

18 2. Responding to the allegations set forth in Paragraph 2 of the Amended Complaint,
 19 Defendants deny that the Mail Policy serves no legitimate penological purpose. As to all other
 20 allegations set forth in this Paragraph, Defendants are without sufficient knowledge or information
 21 to form a belief as to the truth of the allegations, and on that basis, deny each and every one of
 22 them.

23 3. Responding to the allegations set forth in Paragraph 3 of the Amended Complaint,
 24 Defendants admit that Plaintiffs Kenneth Roberts, Ruben Gonzalez-Magallanes, Domingo
 25 Aguilar, and Kevin Prasad currently are incarcerated in San Mateo County. As to all other
 26 allegations set forth in this Paragraph, Defendants are without sufficient knowledge or information
 27 to form a belief as to the truth of the allegations, and on that basis, deny each and every one of
 28 them.

1 4. Responding to the allegations set forth in Paragraph 4 of the Amended Complaint,
2 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
3 allegations contained in Paragraph 4, and on that basis, deny each and every one of them.

4 5. Responding to the allegations set forth in Paragraph 5 of the Amended Complaint,
5 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
6 allegations in this Paragraph, and on that basis, deny each and every one of them.

7 6. Responding to the allegations set forth in Paragraph 6 of the Amended Complaint,
8 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
9 allegations contained in Paragraph 6, and on that basis, deny each and every one of them.

10 7. Responding to the allegations set forth in Paragraph 7 of the Amended Complaint,
11 Defendants admit that Plaintiff Zachary Greenberg was incarcerated in San Mateo County when
12 this lawsuit was filed. As to all other allegations set forth in this Paragraph, Defendants are
13 without sufficient knowledge or information to form a belief as to the truth of the allegations, and
14 on that basis, deny each and every one of them.

15 8. Responding to the allegations set forth in Paragraph 8 of the Amended Complaint,
16 Defendants deny each and every one of them.

17 9. Responding to the allegations set forth in Paragraph 9 of the Amended Complaint,
18 Defendants deny that the Mail Policy serves no legitimate penological purpose. As to all other
19 allegations set forth in this Paragraph, Defendants are without sufficient knowledge or information
20 to form a belief as to the truth of the allegations, and on that basis, deny each and every one of
21 them.

22 10. Responding to the allegations set forth in Paragraph 10 of the Amended Complaint,
23 Defendants deny that the Mail Policy undermines the County's penological interests in successful
24 reentry. As to all other allegations set forth in this Paragraph, Defendants are without sufficient
25 knowledge or information to form a belief as to the truth of the allegations, and on that basis, deny
26 each and every one of them.

27 11. Responding to the allegations set forth in Paragraph 11 of the Amended Complaint,
28 Defendants deny that the Mail Policy impedes religious correspondence. As to all other allegations

1 set forth in this Paragraph, Defendants are without sufficient knowledge or information to form a
2 belief as to the truth of the allegations, and on that basis, deny each and every one of them.

3 12. Responding to the allegations set forth in Paragraph 12 of the Amended Complaint,
4 Defendants deny Plaintiffs are entitled to any relief. Defendants further deny that the Mail Policy
5 and use of MailGuard violates Article I, § 2 of the California Constitution and Article I, § 13 of
6 the California Constitution.

7 **JURISDICTION AND VENUE**

8 13. Responding to the allegations set forth in Paragraph 13 of the Amended Complaint,
9 Defendants admit this Court had subject-matter jurisdiction over Plaintiffs' claims under 28
10 U.S.C. §§ 1331 and 1367, and continues to have subject-matter jurisdiction because federal
11 jurisdiction is established at the time of removal and cannot be extinguished by subsequent
12 amendments. Defendants further admit that venue was and remains appropriate under 28 U.S.C. §
13 1446(a) because the Superior Court of San Mateo County is located in the Northern District of
14 California.

15 14. Responding to the allegations set forth in Paragraph 14 of the Amended Complaint,
16 Defendants deny that venue is proper in San Mateo County Superior Court.

17 **PARTIES**

18 15. Responding to the allegations set forth in Paragraph 15 of the Amended Complaint,
19 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
20 allegations and, on that basis, deny each and every one of them.

21 16. Responding to the allegations set forth in Paragraph 16 of the Amended Complaint,
22 Defendants admit that Plaintiff Kenneth Roberts is currently incarcerated in San Mateo County at
23 Maple Street Correctional Center. As to all other allegations set forth in this Paragraph,
24 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
25 allegations, and on that basis, deny each and every one of them.

1 17. Responding to the allegations set forth in Paragraph 17 of the Amended Complaint,
2 Defendants admit that Plaintiff Ruben Gonzalez-Magallanes is currently incarcerated in San
3 Mateo County at Maple Street Correctional Center. As to all other allegations set forth in this
4 Paragraph, Defendants are without sufficient knowledge or information to form a belief as to the
5 truth of the allegations, and on that basis, deny each and every one of them.

6 18. Responding to the allegations set forth in Paragraph 18 of the Amended Complaint,
7 Defendants admit that Plaintiff Domingo Aguilar is currently incarcerated in San Mateo County at
8 Maple Street Correctional Center. As to all other allegations set forth in this Paragraph,
9 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
10 allegations, and on that basis, deny each and every one of them.

11 19. Responding to the allegations set forth in Paragraph 19 of the Amended Complaint,
12 Defendants admit that Plaintiff Kevin Prasad is currently incarcerated in San Mateo County at
13 Maple Street Correctional Center. As to all other allegations set forth in this Paragraph,
14 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
15 allegations, and on that basis, deny each and every one of them.

16 20. Responding to the allegations set forth in Paragraph 20 of the Amended Complaint,
17 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
18 allegations and, on that basis, deny each and every one of them.

19 21. Responding to the allegations set forth in Paragraph 21 of the Amended Complaint,
20 Defendants admit that Plaintiff Zachary Greenberg was previously incarcerated in San Mateo
21 County at Maple Street Correctional Center. As to all other allegations set forth in this Paragraph,
22 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
23 allegations, and on that basis, deny each and every one of them.

24 22. Responding to the allegations set forth in Paragraph 22 of the Amended Complaint,
25 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
26 allegations and, on that basis, deny each and every one of them.

23. Responding to the allegations set forth in Paragraph 23 of the Amended Complaint, Defendants admit the allegations contained in the first two sentences to Paragraph 23, but deny each of the remaining allegations to this paragraph.

24. Responding to the allegations set forth in Paragraph 24 of the Amended Complaint, Defendants admit that Christina Corpus is the Sheriff of San Mateo County. Defendants deny the remaining allegations.

FACTS

25. Responding to the allegations set forth in Paragraph 25 of the Amended Complaint, Defendants admit that Smart is a Florida-based company. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations to paragraph 25 and, on that basis, deny each and every one of them.

26. Responding to the allegations set forth in Paragraph 26 of the Amended Complaint, Defendants admit that certain County corrections officers can review mail, approve or reject it, and that incarcerated persons have access to approved mail via tablets and kiosks. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations to Paragraph 26 and, on that basis, deny each and every one of them.

27. Responding to the allegations set forth in Paragraph 27 of the Amended Complaint, Defendants admit that, prior to implementing the Mail Policy, incoming physical mail was reviewed before delivery to its recipient. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations to Paragraph 27 and, on that basis, deny each and every one of them.

28. Responding to the allegations set forth in Paragraph 28 of the Amended Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28 and, on that basis, deny each and every one of them.

29. Responding to the allegations set forth in Paragraph 29 of the Amended Complaint, Defendants deny that their use of MailGuard subjects incoming mail and those who send it to surveillance that is unprecedented in its scope and duration.

a. Responding to Paragraph 29a of the Amended Complaint, Defendants admit that

1 the County's contract with Smart provided that Smart would store all digitized mail
2 for seven years from the date of the inmate's release from the County's facility.

3 Defendants are without sufficient knowledge or information to form a belief as to
4 the truth of the remaining allegations to Paragraph 29a and, on that basis, deny each
5 and every one of them.

6 b. Responding to Paragraph 29b of the Amended Complaint, Defendants are without
7 sufficient knowledge or information to form a belief as to the truth of the
8 allegations to Paragraph 29b and, on that basis, deny each and every one of them.

9 c. Responding to Paragraph 29c of the Amended Complaint, Defendants are without
10 sufficient knowledge or information to form a belief as to the truth of the
11 allegations to Paragraph 29c and, on that basis, deny each and every one of them.

12 30. Responding to the allegations set forth in Paragraph 30 of the Amended Complaint,
13 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
14 allegations in this Paragraph, and on that basis, deny each and every one of them.

15 31. Responding to the allegations set forth in Paragraph 31 of the Amended Complaint,
16 Defendants admit the allegations to this paragraph.

17 32. Responding to the allegations set forth in Paragraph 32 of the Amended Complaint,
18 Defendants admit that, in 2021, the County implemented the Mail Policy and began to deliver
19 inmate postal mail electronically (instead of physically) using Smart's MailGuard technology.
20 Defendants further admit that on April 6, 2021, the Sheriff's Office issued a press release
21 regarding the upcoming mail policy changes. Defendants further admit that the Sheriff's Office
22 informed certain corrections officers of the upcoming mail policy changes. Defendants further
23 admit that the County issued requests for proposals relating to various inmate communication
24 services. Defendants further admit that the County announced in May 2021 that a contract for
25 certain inmate communications services would be awarded to Smart. Defendants are without
26 sufficient knowledge or information to form a belief as to the truth of the remaining allegations to
27 Paragraph 32 and, on that basis, deny each and every one of them.

28 33. Responding to the allegations set forth in Paragraph 33 of the Amended Complaint,

1 Defendants admit allegations contained in the first two sentences of Paragraph 33. Defendants
2 deny each and every one of the remaining allegations to Paragraph 33.

3 34. Responding to Paragraph 34 of the Amended Complaint, Defendants admit that
4 certain non-legal inmate mail is sent to Florida for digitization. Defendants are without sufficient
5 knowledge or information to form a belief as to the truth of the remaining allegations to Paragraph
6 34 and, on that basis, deny each and every one of them.

7 35. Defendants are without sufficient knowledge or information to form a belief as to
8 the truth of the allegations in Paragraph 35 of the Amended complaint and on that basis, deny each
9 and every one of them.

10 36. Defendants are without sufficient knowledge or information to form a belief as to
11 the truth of the allegations in Paragraph 36 of the Amended complaint and on that basis, deny each
12 and every one of them.

13 37. Responding to Paragraph 37 of the Amended Complaint, Defendants deny that in-
14 person educational opportunities are very limited for those incarcerated in San Mateo County.
15 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
16 remaining allegations to Paragraph 37 and, on that basis, deny each and every one of them.

17 38. Defendants are without sufficient knowledge or information to form a belief as to
18 the truth of the allegations in Paragraph 38 of the Amended Complaint and on that basis, deny
19 each and every one of them.

20 39. Defendants are without sufficient knowledge or information to form a belief as to
21 the truth of the allegations in Paragraph 39 of the Amended Complaint and on that basis, deny
22 each and every one of them.

23 40. Responding to the allegations set forth in Paragraph 40 of the Amended Complaint,
24 Defendants deny that the County's digitization of inmate mail has undermined the ability of
25 County inmates to express themselves and to associate with others through the mail. Defendants
26 respond to the subparts to Paragraph 40 as follows:

- 27 a. Defendants admit the allegations contained in Paragraph 40a of the Amended
28 Complaint.

1 b. Defendants deny the allegations contained in Paragraph 40b of the Amended
2 Complaint.

3 c. Defendants deny the allegations contained in Paragraph 40c of the Amended
4 Complaint.

5 d. Defendants deny the allegations contained in Paragraph 40d of the Amended
6 Complaint.

7 e. Defendants admit that the screens to the tablets are approximately 7 inches across.
8 Defendants are without sufficient knowledge or information to form a belief as to
9 the truth of the remaining allegations to Paragraph 40e and, on that basis, deny each
10 and every one of them.

11 41. Responding to the allegations set forth in Paragraph 41 of the Amended Complaint,
12 Defendants admit that phones for County inmates are in shared spaces and sometimes adjacent to
13 others. Defendants further admit that video visitation and email messaging may be conducted
14 through tablets. Defendants further admit that video communications are recorded and retained.
15 Defendants further admit that in-person visits are permitted at Maple Street Correction Center.
16 Defendants further admit that visits are allowed at Maguire Correction Facility. Defendants further
17 admit that visitation by minors is not permitted. Defendants are without sufficient knowledge or
18 information to form a belief as to the truth of the remaining allegations to Paragraph 41 and, on
19 that basis, deny each and every one of them.

20 42. Defendants deny each and every allegation to Paragraph 42 of the Amended
21 Complaint.

22 43. Defendants deny each and every allegation to Paragraph 43 of the Amended
23 Complaint.

24 44. Responding to Paragraph 44 of the Amended Complaint, Defendants admit that
25 certain San Mateo County officials have access to Smart's SmartEcosystem Dashboard and digital
26 copies of incoming non-legal mail. Defendants are without sufficient knowledge or information to
27 form a belief as to the truth of the remaining allegations to Paragraph 44, including the allegations
28 contained in the footnote to Paragraph 44, and, on that basis, deny each and every one of them.

1 45. Responding to Paragraph 45 of the Amended Complaint, Defendants admit that in
2 certain instances the County permits certain approved officials to search the SmartEcosystem
3 Dashboard. Defendants admit the allegations contained in the third sentence to Paragraph 45 of the
4 Amended Complaint. Defendants are without sufficient knowledge or information to form a belief
5 as to the truth of the remaining allegations to Paragraph 45 and, on that basis, deny each and every
6 one of them.

7 46. Responding to the allegations set forth in Paragraph 46 of the Amended Complaint,
8 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
9 allegations in this Paragraph, and on that basis, deny each and every one of them, including the
10 allegations contained in the footnote to Paragraph 46.

11 47. Responding to the allegations set forth in Paragraph 47 of the Amended Complaint,
12 Defendants admit that the County provided public notice regarding the Mail Policy, including that
13 non-legal physical mail would be scanned and made available for viewing on inmate kiosks or
14 tablets. Defendants further admit that when non-legal inmate mail is sent to a San Mateo County
15 jail, the County returns it to the sender. The County further admits that its Mail Policy is posted on
16 the County Sheriff's Office website, and includes instructions to send non-legal physical inmate
17 mail to Smart's processing center in Florida. Defendants admit that the County provides a notice
18 on its website and also through the jail describing its inmate mail procedure. Defendants are
19 without sufficient knowledge or information to form a belief as to the truth of the remaining
20 allegations to Paragraph 47 and, on that basis, deny each and every one of them.

21 48. Responding to the allegations set forth in Paragraph 48 of the Amended Complaint,
22 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
23 allegations in this Paragraph, and on that basis, deny each and every one of them.

24 49. Responding to the allegations set forth in Paragraph 49 of the Amended Complaint,
25 Defendants admit the allegations contained in the second and third sentences to Paragraph 49.
26 Defendants deny the remaining allegations to paragraph 49.

27 50. Responding to the allegations set forth in Paragraph 50 of the Amended Complaint,
28 Defendants deny the allegations contained in the first sentence to Paragraph 50. Defendants are

1 without sufficient knowledge or information to form a belief as to the truth of the remaining
2 allegations to Paragraph 50 and, on that basis, deny each and every one of them.

3 51. Responding to the allegations set forth in Paragraph 51 of the Amended Complaint,
4 Defendants deny the allegations contained in the first sentence to Paragraph 51. Defendants are
5 without sufficient knowledge or information to form a belief as to the truth of the remaining
6 allegations in Paragraph 51, and on that basis, deny each and every one of them.

7 52. Responding to the allegations set forth in Paragraph 52 of the Amended Complaint,
8 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
9 allegations in this Paragraph, and on that basis, deny each and every one of them.

10 53. Responding to the allegations set forth in Paragraph 53 of the Amended Complaint,
11 Defendants deny the allegations contained in the first sentence to Paragraph 53. Defendants are
12 without sufficient knowledge or information to form a belief as to the truth of the remaining
13 allegations in Paragraph 53, and on that basis, deny each and every one of them.

14 54. Responding to the allegations set forth in Paragraph 54 of the Amended Complaint,
15 Defendants deny the allegations contained in the first sentence to Paragraph 54. Defendants are
16 without sufficient knowledge or information to form a belief as to the truth of the remaining
17 allegations to Paragraph 54 and, on that basis, deny each and every one of them.

18 55. Responding to the allegations set forth in Paragraph 55 of the Amended Complaint,
19 Defendants deny the allegations contained in the first sentence to Paragraph 55, but admit the
20 allegations contained in the second sentence to Paragraph 55. Defendants are without sufficient
21 knowledge or information to form a belief as to the truth of the remaining allegations to Paragraph
22 55 and, on that basis, deny each and every one of them.

23 56. Responding to the allegations set forth in Paragraph 56 of the Amended Complaint,
24 Defendants deny the allegations contained in the first sentence to Paragraph 56. Defendants are
25 without sufficient knowledge or information to form a belief as to the truth of the remaining
26 allegations to Paragraph 56 and, on that basis, deny each and every one of them.

27 57. Responding to the allegations set forth in Paragraph 57 of the Amended Complaint,
28 Defendants deny the allegations contained in the fifth, sixth, and seventh sentences to Paragraph

1 57. Defendants are without sufficient knowledge or information to form a belief as to the truth of
2 the remaining allegations to Paragraph 57 and, on that basis, deny each and every one of them.

3 58. Responding to the allegations set forth in Paragraph 58 of the Amended Complaint,
4 Defendants deny the allegations contained in the first and final sentences to Paragraph 58.
5 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
6 remaining allegations to Paragraph 58 and, on that basis, deny each and every one of them.

7 59. Responding to the allegations set forth in Paragraph 59 of the Amended Complaint,
8 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
9 allegations in this Paragraph, and on that basis, deny each and every one of them.

10 60. Responding to the allegations set forth in Paragraph 60 of the Amended Complaint,
11 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
12 allegations in this Paragraph, and on that basis, deny each and every one of them.

13 61. Responding to the allegations set forth in Paragraph 61 of the Amended Complaint,
14 Defendants deny that the Mail Policy has undermined A.B.O. Comix's expression and association
15 with its incarcerated members. Defendants are without sufficient knowledge or information to
16 form a belief as to the truth of the remaining allegations to Paragraph 61 and, on that basis, deny
17 each and every one of them.

18 62. Responding to the allegations set forth in Paragraph 62 of the Amended Complaint,
19 Defendants deny that the Mail Policy has deterred members of the collective from expressing
20 themselves. Defendants are without sufficient knowledge or information to form a belief as to the
21 truth of the remaining allegations to Paragraph 62 and, on that basis, deny each and every one of
22 them.

23 63. Responding to the allegations set forth in Paragraph 63 of the Amended Complaint,
24 Defendants admit that Kenneth Roberts has been incarcerated at Maple Street Correctional Center
25 since September 2021. Defendants are without sufficient knowledge or information to form a
26 belief as to the truth of the remaining allegations to Paragraph 63 and, on that basis, deny each and
27 every one of them.

28 64. Responding to the allegations set forth in Paragraph 64 of the Amended Complaint,

1 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
2 allegations in this Paragraph, and on that basis, deny each and every one of them.

3 65. Responding to the allegations set forth in Paragraph 65 of the Amended Complaint,
4 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
5 allegations in this Paragraph, and on that basis, deny each and every one of them.

6 66. Responding to the allegations set forth in Paragraph 66 of the Amended Complaint,
7 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
8 allegations in this Paragraph, and on that basis, deny each and every one of them.

9 67. Responding to the allegations set forth in Paragraph 67 of the Amended Complaint,
10 Defendants admit the allegations contained in the first sentence to Paragraph 67. Defendants are
11 without sufficient knowledge or information to form a belief as to the truth of the remaining
12 allegations to Paragraph 67 and, on that basis, deny each and every one of them.

13 68. Responding to the allegations set forth in Paragraph 68 of the Amended Complaint,
14 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
15 allegations in this Paragraph, and on that basis, deny each and every one of them.

16 69. Responding to the allegations set forth in Paragraph 69 of the Amended Complaint,
17 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
18 allegations in this Paragraph, and on that basis, deny each and every one of them.

19 70. Responding to the allegations set forth in Paragraph 70 of the Amended Complaint,
20 Defendants deny the allegations contained in the first and final sentences to Paragraph 70.
21 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
22 remaining allegations to Paragraph 70 and, on that basis, deny each and every one of them.

23 71. Responding to the allegations set forth in Paragraph 71 of the Amended Complaint,
24 Defendants admit the allegations contained in the first and second sentences to Paragraph 71.
25 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
26 remaining allegations to Paragraph 71 and, on that basis, deny each and every one of them.

27 72. Responding to the allegations set forth in Paragraph 72 of the Amended Complaint,
28 Defendants are without sufficient knowledge or information to form a belief as to the truth of the

1 allegations in this Paragraph, and on that basis, deny each and every one of them.

2 73. Responding to the allegations set forth in Paragraph 73 of the Amended Complaint,
3 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
4 allegations in this Paragraph, and on that basis, deny each and every one of them.

5 74. Responding to the allegations set forth in Paragraph 74 of the Amended Complaint,
6 Defendants admit the allegations contained in the first sentence to Paragraph 74. Defendants are
7 without sufficient knowledge or information to form a belief as to the truth of the remaining
8 allegations to Paragraph 74 and, on that basis, deny each and every one of them.

9 75. Responding to the allegations set forth in Paragraph 75 of the Amended Complaint,
10 Defendants deny the allegations contained in the first sentence to Paragraph 75. Defendants are
11 without sufficient knowledge or information to form a belief as to the truth of the remaining
12 allegations to Paragraph 75 and, on that basis, deny each and every one of them.

13 76. Responding to the allegations set forth in Paragraph 76 of the Amended Complaint,
14 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
15 allegations in this Paragraph, and on that basis, deny each and every one of them.

16 77. Responding to the allegations set forth in Paragraph 77 of the Amended Complaint,
17 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
18 allegations in this Paragraph, and on that basis, deny each and every one of them.

19 78. Responding to the allegations set forth in Paragraph 78 of the Amended Complaint,
20 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
21 allegations in this Paragraph, and on that basis, deny each and every one of them.

22 79. Responding to the allegations set forth in Paragraph 79 of the Amended Complaint,
23 Defendants deny the allegations contained in the first sentence to Paragraph 79. Defendants are
24 without sufficient knowledge or information to form a belief as to the truth of the remaining
25 allegations to Paragraph 79 and, on that basis, deny each and every one of them.

26 80. Responding to the allegations set forth in Paragraph 80 of the Amended Complaint,
27 Defendants deny the allegations contained in the final sentence to Paragraph 80. Defendants are
28 without sufficient knowledge or information to form a belief as to the truth of the remaining

1 allegations to Paragraph 80 and, on that basis, deny each and every one of them.

2 81. Responding to the allegations set forth in Paragraph 81 of the Amended Complaint,
3 Defendants admit the allegations contained in the first sentence to Paragraph 81. Defendants are
4 without sufficient knowledge or information to form a belief as to the truth of the remaining
5 allegations to Paragraph 81 and, on that basis, deny each and every one of them.

6 82. Responding to the allegations set forth in Paragraph 82 of the Amended Complaint,
7 Defendants deny the allegations contained in the first sentence to Paragraph 82. Defendants are
8 without sufficient knowledge or information to form a belief as to the truth of the remaining
9 allegations to Paragraph 82 and, on that basis, deny each and every one of them.

10 83. Responding to the allegations set forth in Paragraph 83 of the Amended Complaint,
11 Defendants deny the allegations contained in the first sentence to Paragraph 83. Defendants are
12 without sufficient knowledge or information to form a belief as to the truth of the remaining
13 allegations to Paragraph 83 and, on that basis, deny each and every one of them.

14 84. Responding to the allegations set forth in Paragraph 84 of the Amended Complaint,
15 Defendants deny the allegations contained in the first sentence to Paragraph 84. Defendants are
16 without sufficient knowledge or information to form a belief as to the truth of the remaining
17 allegations to Paragraph 84 and, on that basis, deny each and every one of them.

18 85. Responding to the allegations set forth in Paragraph 85 of the Amended Complaint,
19 Defendants deny the allegations contained in the first sentence to Paragraph 85. Defendants are
20 without sufficient knowledge or information to form a belief as to the truth of the remaining
21 allegations to Paragraph 85 and, on that basis, deny each and every one of them.

22 86. Responding to the allegations set forth in Paragraph 86 of the Amended Complaint,
23 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
24 allegations in this Paragraph, and on that basis, deny each and every one of them.

25 87. Responding to the allegations set forth in Paragraph 87 of the Amended Complaint,
26 Defendants deny the allegations contained in the first sentence to Paragraph 87. Defendants are
27 without sufficient knowledge or information to form a belief as to the truth of the remaining
28 allegations to Paragraph 87 and, on that basis, deny each and every one of them.

88. Responding to the allegations set forth in Paragraph 88 of the Amended Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, deny each and every one of them.

CAUSES OF ACTION

COUNT ONE

Article I, Section 2 of the California Constitution

On behalf of all Plaintiffs against all Defendants

89. Responding to the allegations set forth in Paragraph 89 of the Amended Complaint, Defendants deny each and every allegation contained in Paragraph 89.

COUNT TWO

Article I, Section 13 of the California Constitution

On behalf of all Plaintiffs against all Defendants

90. Responding to the allegations set forth in Paragraph 90 of the Amended Complaint, Defendants deny each and every allegation contained in Paragraph 90.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses. By doing so, Defendants do not assume the burden of proving any facts, issues, or elements of Plaintiffs' claims for relief whether such burden properly and solely belongs to the Plaintiffs. Nothing stated herein is intended to be construed as an acknowledgment that any particular issue or subject matter is relevant to Plaintiffs' allegations. Nothing stated herein shall constitute an admission of any kind.

FIRST AFFIRMATIVE DEFENSE

(Lack of Standing as to Plaintiff A.B.O. Comix)

1. Plaintiff A.B.O. Comix lacks associational standing to bring its claims under Article III of the United States Constitution.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing as to Plaintiff Zachary Greenberg)

2. Plaintiff Zachary Greenberg lacks standing and the claims based on his past incarceration in the County's jails are moot. The Amended Complaint pleads that "Plaintiff

1 Zachary Greenberg is currently incarcerated at Folsom State Prison” and is no longer incarcerated
 2 in any of the County’s jails. Amended Complaint (“AC”) ¶ 21. But a plaintiff who “is no longer
 3 incarcerated in [a] Jail . . . is not subject to the Jail’s polic[ies]” and “has no standing to seek . . .
 4 injunctive relief” regarding such policies. *King v. Baca*, 2001 WL 682793, at *3, *5 (C.D. Cal.
 5 June 12, 2001). As such, Plaintiff Zachary Greenberg lacks standing and any injunctive-relief
 6 claims Mr. Greenberg could have brought in the past based on previous incarceration in the
 7 County’s jails are moot.

8 **THIRD AFFIRMATIVE DEFENSE**

9 **(Lack of Standing as to Plaintiff Wumi Oladipo)**

10 3. The Amended Complaint represents that “Wumi Oladipo . . . is the significant other
 11 of Zachary Greenberg.” AC ¶ 86. Assuming arguendo that her relationship with Mr. Greenberg
 12 would have conferred standing to challenge the mail policy during Mr. Greenberg’s incarceration
 13 in the County’s jails, she no longer has standing because “Mr. Greenberg was transferred to state
 14 custody” and is now “incarcerated at Folsom State Prison.” AC ¶¶ 21, 86. Thus, neither
 15 Mr. Greenberg nor Ms. Oladipo are “subject to the Jail’s polic[ies]” and have “no standing [to]
 16 seek . . . injunctive relief” regarding such policies. *King*, 2001 WL 682793, at *3, *5. Any
 17 injunctive-relief claims Ms. Oladipo could have brought in the past based on her significant
 18 other’s previous incarceration in the County’s jails are moot.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 **(Failure to Exhaust Administrative Remedies)**

21 4. Plaintiffs have failed to exhaust their administrative remedies. To bring a claim
 22 under California law regarding the terms of confinement, prisoners “must exhaust available
 23 administrative remedies before filing a lawsuit.” *Parthemore v. Col*, 221 Cal. App. 4th 1372, 1380
 24 (2013). In addition, “where remedy by appeal is available” under a grievance procedure, the
 25 plaintiff likewise must exhaust all avenues of appeal under the procedure “before redress may be
 26 had in the courts.” *Blake v. PUC of City & Cnty. of San Francisco*, 120 Cal. App. 2d 671, 673
 27 (1953). California law dictates that all jails “shall develop written policies and procedures whereby
 28 all incarcerated persons have the opportunity and ability to submit and appeal grievances relating

1 to any conditions of confinement, including but not limited to: . . . mail . . . procedures . . .” 15
 2 C.C.R. § 1073. Pursuant to this law, the County has established a grievance procedure which
 3 enables “any inmate [to] file a grievance relating to conditions of confinement,” including “mail
 4 use procedures.” To initiate the procedure, an inmate must “complete[] [an] inmate grievance
 5 form” which must “be filed . . . within 14 days of the complaint or issue.” The procedure dictates
 6 that “[u]pon receiving a completed inmate grievance form, the supervisor shall ensure that the
 7 grievance is investigated and resolved or denied in a timely manner, as established by the Division
 8 Commander.” It further provides: “Inmates may appeal the finding of a grievance to the Division
 9 Commander as the final level of appeal within five days of receiving the findings of the original
 10 grievance. The Division Commander will review the grievance and either confirm or deny it.”
 11 Plaintiffs have failed to fully exhaust their administrative remedies under the County’s grievance
 12 procedure.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(Government Claims Act)**

15 5. Plaintiffs failed to comply with Government Code §§ 810, et seq., and §§ 910 et
 16 seq. both procedurally and substantively.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 **(Estoppel, Waiver)**

19 6. The Amended Complaint is barred, in whole or in part, by the doctrines of estoppel
 20 and waiver.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Unclean Hands)**

23 7. By virtue of Plaintiffs’ behavior as partially described in the Answer to the
 24 allegations within the Amended Complaint, Plaintiffs are barred from receiving relief by the
 25 doctrine of unclean hands.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 **(Qualified Immunity)**

28 8. Defendants are immune from liability under the doctrine of qualified immunity.

NINTH AFFIRMATIVE DEFENSE

(Sovereign Immunity)

9. Defendants are immune under the doctrine of sovereign immunity.

TENTH AFFIRMATIVE DEFENSE

(Privilege)

10. Defendants' actions were privileged under applicable statutes and case law.

RESERVATION OF FURTHER AFFIRMATIVE DEFENSES

Defendants lack sufficient information of all facts and evidence surrounding Plaintiffs' claims and therefore are unable to completely ascertain all affirmative defenses available to them at this time. Defendants hereby give notice that they intend to assert further affirmative defenses as may become available during discovery in this matter. Accordingly, Defendants reserve their right to amend this Answer and assert additional affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, having responded to Plaintiffs' and Counter-Defendants' Amended Complaint and stating their affirmative defenses, Defendants and Counterclaimants pray that:

1. The Amended Complaint of Plaintiffs and Counter-Defendants be dismissed in its entirety with prejudice;

2. Judgment be entered against Plaintiffs and Counter-Defendants and in favor of Defendants and Counterclaimants, and that Plaintiffs and Counter-Defendants take nothing by their Amended Complaint;

3. The Court award Defendants and Counterclaimants their attorneys' fees, costs, and expenses;

4. Defendants and Counterclaimants shall have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

COUNTERCLAIMS

Parties

1
2
3 1. The County of San Mateo (the “County”) is a California municipal corporation
4 with its principal offices located in Redwood City, County of San Mateo, State of California.

5 2. Upon information and belief, A.B.O. Comix is an unincorporated business entity
6 not licensed to do business in the State of California with its principal place of business at 2520
7 Telegraph Ave, Oakland, California 94612. Upon information and belief, A.B.O. Comix employs
8 between 11 and 20 individuals, generates between \$1 million to \$5 million in revenue annually,
9 and is not licensed or registered to do business in the State of California.

10 3. Kenneth Roberts is an individual who is currently incarcerated in San Mateo
11 County at Maple Street Correctional Center.

12 4. Ruben Gonzalez-Magallanes is an individual who is currently incarcerated in San
13 Mateo County at Maple Street Correctional Center.

14 5. Domingo Aguilar is an individual who is currently incarcerated in San Mateo
15 County at Maguire Correctional Facility.

16 6. Kevin Prasad is an individual who is currently incarcerated in San Mateo County at
17 Maple Street Correctional Center.

18 7. Upon information and belief, Malti Prasad is an individual residing in Sacramento
19 County, California.

20 8. Upon information and belief, Zachary Greenberg is an individual who was
21 convicted in September 2022 of assault with a deadly weapon and is currently incarcerated at
22 Folsom State Penitentiary in Represa, California. Mr. Greenberg is not incarcerated in any of the
23 County’s jails and is not subject to its regulations.

24 9. Upon information and belief, Wumi Oladipo is an individual residing in Alameda
25 County, California.

Jurisdiction and Venue

26
27 10. This Court has subject-matter jurisdiction over these Counterclaims pursuant to 28
28 U.S.C. § 1331 and § 2201 because at the time the County removed Plaintiffs’ suit to federal court

1 it asserted myriad claims arising under federal law. “Whether federal question jurisdiction exists is
 2 based on the claims asserted on the ‘face’ of the complaint at the time of removal.” *Peek v. Bish’s*
 3 *RV, Inc.*, No. 3:21-cv-00370-MMD-CLB, 2022 WL 3716725, at *2 (D. Nev. Mar. 18, 2022)
 4 (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)).

5 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the
 6 Counterclaims arose in the Northern District of California.

7 **Facts Common to All Counterclaims**

8 12. Prison administrators are under a Constitutional “obligation to take reasonable
 9 measures to guarantee the safety of . . . inmates.” *Hudson v. Palmer*, 468 U.S. 517, 526–27 (1984).
 10 To satisfy this duty, they are duty bound to “prevent, so far as possible, the flow of illicit weapons
 11 into the prison” and “must be ever alert to attempts to introduce drugs and other contraband into
 12 the premises.” *Id.* at 527.

13 13. Simply “permitting mail to pass through a prison without examination of the
 14 contents, as a means of accommodating” a prisoner’s “asserted constitutional right to be free from
 15 search and seizure of their mail, would endanger both guards and other inmates” and violate the
 16 constitutional obligation of prison administrators to take reasonable measures to protect such
 17 persons. *Ransom v. Greenwood*, No. 99-CV-2592, 2005 WL 8166145, at *9 (S.D. Cal. Aug. 17,
 18 2005).

19 14. Preventing the introduction of drugs or weapons “is one of the most perplexing
 20 problems of prisons.” *Hudson*, 468 U.S. at 527. This problem has been compounded in recent
 21 years because fentanyl and other opioids can be easily concealed in letters. *See City & Cnty. of*
 22 *San Francisco v. Purdue Pharma L.P.*, 491 F. Supp. 3d 610, 680 (N.D. Cal. 2020).

23 15. For this reason, the Constitution affords prison administrators a presumptive right
 24 “to inspect[] mail for contraband.” *Crofton v. Roe*, 170 F.3d 957, 961 (9th Cir. 1999). Such
 25 screening is also warranted because administrators “must be vigilant to detect escape plots.”
 26 *Hudson*, 468 U.S. at 527.

27 16. “In prison, official surveillance has traditionally been the order of the day.” *Lanza*
 28 *v. State of New York*, 370 U.S. 139, 143 (1962).

1 17. This means that, absent very narrow exceptions, anyone communicating with an
 2 incarcerated person should do so with the assumption that anything they say or write is being
 3 “electronically intercepted and recorded.” *Id.* at 141. Ordinarily “no prisoner” or person
 4 communicating with a prisoner “should reasonably expect privacy” in prison-based
 5 communications—much less an attorney who should be acutely aware of these rules. *U.S. v. Van*
 6 *Poyck*, 77 F.3d 285, 290–91 (9th Cir. 1996).

7 18. Exercising its constitutional obligation to protect the safety of inmates as well as
 8 jail staff, in April 2021, the County initiated a policy to digitize incoming non-legal mail to
 9 inmates (the “Mail Policy”). To do so, the County contracted with Smart Communications
 10 Holding, Inc. (“Smart”), to use Smart’s MailGuard technology.

11 19. Under the Mail Policy, inmate mail is directed to Smart, who scans the mail and
 12 uploads digital copies of the mail into a database accessible to jail staff. The jail staff reviews the
 13 mail, and if approved, a digital copy is provided to the recipient via tablets and kiosks.

14 20. The County initiated the Mail Policy to further address the introduction of drugs,
 15 weapons, and other contraband into the jail through inmate mail. The County was particularly
 16 concerned about mitigating the introduction of opioids, including fentanyl, into the jail through
 17 inmate mail.

18 21. The opioid epidemic, particularly fentanyl, has had devastating effects on the Bay
 19 Area. “The opioid crisis has infiltrated communities throughout the country,” including the Bay
 20 Area. *City & Cnty. of San Francisco, v. Purdue Pharma L.P.*, 491 F. Supp. 3d 610, 629 (N.D. Cal.
 21 2020). And “it is common knowledge that fentanyl is particularly deadly.” *Commonwealth v.*
 22 *Burton*, 234 A.3d 824, 833 (Pa. Sup. Ct. 2020). “Between 1999 and 2016, more than 350,000
 23 people died from opioid-related overdoses—2017, alone, added nearly 48,000 people to the total
 24 number of opioid-related deaths.” *Purdue Pharma L.P.*, 491 F. Supp. 3d at 629. Thus, courts
 25 routinely take “judicial notice that heroin/fentanyl addiction in this country has reached crisis
 26 levels and that Fentanyl is an especially addicting, dangerous, and unpredictable opiate that has
 27 exacerbated the crisis, resulting in many deaths.” *U.S. v. Lebron*, 492 F. Supp. 3d 737, 740 (N.D.
 28 Ohio 2020).

22. Jails obviously are not immune from this epidemic. As Judge Breyer observed, “[n]ot only has the opioid crisis impacted San Francisco’s streets, but [its] jails are seeing an influx of opioid contraband.” *Purdue Pharma L.P.*, 491 F. Supp. 3d at 629.

23. Fentanyl and other opioids are easily introduced into jails by mail “through paper that ha[s] been soaked, sprayed or otherwise treated with illicit substances before being mailed to prisoners.” *Human Rights Def. Center v. Bd of Cnty. Comm’rs*, __ F. Supp. 3d __, 2023 WL 1473863, at *1 (D.N.H. Feb. 2, 2023) (“*HRDC*”).

24. “Narcotics introduction pose[s] a risk to the health, safety, and security of the Jail’s prisoners and staff.” *Id.* at *1. As Judge Breyer recently found: “Fentanyl is deadly. While heroin generally contains only 5%–15% active drug, fentanyl is often 100% pure.” *City & Cnty. of San Francisco v. Purdue Pharma, L.P.*, 620 F. Supp. 3d 936, 22 U.S. Dist. LEXIS 142962, at *32 (N.D. Cal. 2022) (citation omitted). In fact, it is “100 times more potent than morphine and as much as 50 times more potent than heroin.” *Id.* Even “[a] dash of fentanyl—not much larger than a few grains of sand—can be fatal.” *Id.* at *33. Moreover, material containing “suspected fentanyl” must be handled with extreme caution “because death can result if just a small amount makes contact with a person’s skin.” *U.S. v. Joseph*, 978 F.3d 1251, 1260 (11th Cir. 2020).

25. Visually “inspecting incoming mail” for fentanyl and many other opioids is ineffective because “methods for disguising narcotic-treated paper [have] grown increasingly sophisticated and visual inspection often fail[s].” *HRDC*, __ F. Supp. 3d __, 2023 WL 1473863, at *1. And buying machines “to scan incoming mail for narcotics” is prohibitively expensive and, critically, such machines “[can]not detect fentanyl.” *Id.*

An Actual Case and Controversy Exists with Regard to the County’s Counterclaims

26. When a party’s actions “cause [another party] to have a real and reasonable apprehension that he will be subject to liability, the [other party] has presented a justiciable case or controversy” under the Declaratory Judgment Act. *Spokane Indian Tribe v. U.S.*, 972 F.2d 1090, 1092 (9th Cir. 1992).

27. Where a plaintiff actually sues a defendant for violating a particular law or legal doctrine and then files an amended complaint no longer asserting that law or legal doctrine, an

1 “existing controversy” remains regarding the purportedly abandoned claim unless that claim is
 2 legally extinguished by a released because the prior suit “create[s] a reasonable apprehension on
 3 the part of the party seeking declaratory judgment.” *E.g., Hoffman-La Roche Inc. v. Genpharm*
 4 *Inc.*, 50 F. Supp. 2d 367, 374 (D.N.J. 1999).

5 28. Plaintiffs’ Original Complaint averred, inter alia, that the Mail Policy “violates the
 6 First Amendment” because “it is not rationally related to any legitimate penological goals” and
 7 “leaves not adequate alternatives to communication.” Original Complaint (“OC”) ¶ 88.

8 29. Plaintiffs’ Original Complaint also averred, inter alia, that the Mail Policy “violates
 9 the Fourth Amendment because it constitutes an unreasonable search and seizure of
 10 correspondence and other information in which Plaintiffs and others maintain a reasonable
 11 expectation of privacy.” OC ¶ 91.

12 30. On May 24, 2023, after the County had undergone the enormous expense of
 13 drafting a comprehensive motion to dismiss, Plaintiffs filed their Amended Complaint, which
 14 likewise alleges that the Mail Policy “serves no legitimate penological purpose,”¹ but “no longer
 15 raises claims under federal law” and instead brings identical claims exclusively “under Article I,
 16 Section 2 and Article I, Section 13 of the California Constitution.”² Plaintiffs then moved to
 17 remand the case to state court, representing their “federal claims have been dropped.” Dkt. 28 at
 18 4:13.

19 31. When the County’s counsel asked Plaintiffs’ counsel to dismiss their purportedly
 20 abandoned federal claims, so that they could not be later revived in state or federal court,
 21 Plaintiffs refused.

22 32. Specifically, after being served with Plaintiffs’ Amended Complaint, the County’s
 23 counsel informed Plaintiffs’ counsel that “[b]y the time you had reached out to us regarding
 24 plaintiffs’ intent to file an amended complaint, we had exhausted considerable resources preparing
 25 a motion to dismiss the federal and the state claims.” Nonetheless, the County diplomatically
 26 offered “not to oppose remand if the plaintiffs voluntarily dismiss all their federal claims with
 27

28 ¹ AC ¶ 2.

² Dkt. 28 at 3:13–14, 2:15–17.

1 prejudice.” *Id.*

2 33. Plaintiffs’ counsel responded:

3 I take Defendants’ concern about dismissal to be that we might
4 ***immediately file*** a new lawsuit raising our federal claims and then
5 litigate the two suits in parallel. I can assure you that we do not
6 intend to do so, and ***we have no plans of litigating our clients’
federal claims at this point.*** We cannot, however, agree to dismiss
the claims with prejudice.

7 (Emphasis added).

8 34. The County’s counsel responded:

9 I appreciate your email. If the plaintiffs do not intend to refile the
10 federal claims either in federal or state court, ***why are they
unwilling to dismiss them with prejudice?***

11 (Emphasis added).

12 35. Plaintiffs’ counsel evasively responded:

13
14 ***We see no reason to voluntarily dismiss the federal claims with
prejudice,*** which, as you know, is not the typical course when the
15 case is in such early stages and there has been no decision on the
16 merits. ***We don’t think there is any benefit to doing so here,*** given
that we’ve already dropped the claims and have told you that we
have no intention of refiling them.

17 (Emphasis added).

18 36. Plaintiffs’ reply in support of their motion to remand reiterates Plaintiffs’ refusal to
19 dismiss their federal claims, representing that: “Plaintiffs believe that their federal claims . . . are
20 meritorious,” but refusing to consent to dismissal of those claims despite purportedly claiming
21 “that they would not litigate those claims.” Dkt. 32 at 2:5-7. If Plaintiffs truly have no intention of
22 reviving their federal claims, no reason exists not to consent to their dismissal with prejudice.

23 37. Moreover, contrary to Plaintiffs’ false representations, their challenges to the Mail
24 Policy “under Article I, Section 2 and Article I, Section 13 of the California Constitution” are
25 governed by the very same law that governs their claims under the First and Fourth Amendments
26 of the United States Constitution.

27 38. Article I, § 2 “is equivalent to the First Amendment’s free speech clause.” *Gerawan*
28

1 *Farming Inc. v. Lyons*, 24 Cal. 4th 468, 512 (2000). First Amendment law recognizes that
 2 “[r]egulations regarding the review of [prisoner’s] incoming mail are evaluated under the . . . test
 3 set forth in *Turner v. Safley*,” 482 U.S. 78 (1987). *Reynolds v. Rios*, 2011 WL 617424, at *2 (E.D.
 4 Cal. Feb. 10, 2011).

5 39. California codified prisoners’ constitutional and statutory civil rights in California
 6 Penal Code § 2600, which provides that during “confinement” inmates may be “deprived of
 7 rights” if such deprivation “is reasonably related to legitimate penological interests.” Section 2600
 8 is “designed to conform California law to the decision in *Turner* [*v. Safely*, 482 U.S. 78 (1987)].”
 9 *Cnty. of Nevada v. Superior Court*, 236 Cal. App. 4th 1001, 1009 n.2 (2015). California’s
 10 Supreme Court held § 2600 embodies ***the sum total of all “statutory as well as constitutional***
 11 ***rights***” enjoyed by prisoners under California law. *In re Qawi*, 32 Cal. 4th 1, 21 (2004) (emphasis
 12 added). Thus, *all* inmate free-speech claims under California law are “governed by the high
 13 court’s test in *Turner*.” *Thompson*, 25 Cal. 4th at 130 (2001). This includes claims under the
 14 “California constitution.” *Snow v. Woodford*, 128 Cal. App. 4th 383, 389, 390 n.3 (2005).

15 40. *Turner* is “a rational-basis test.” *Evans v. Skolnik*, 997 F.3d 1060, 1071 n.8 (9th Cir.
 16 2021). Under it, a jail regulation will survive an inmate’s constitutional challenge “if it is
 17 reasonably related to legitimate penological interests.” *Thompson*, 25 Cal. 4th at 130 (emphasis
 18 and citations omitted).

19 41. Article I, § 13 is the California Constitution’s “counterpart to the Fourth
 20 Amendment[’s]” search-and-seizure clause. *People v. Sabo*, 185 Cal. App. 3d 845, 448 n.1 (1986).
 21 Like the Fourth Amendment, a claim under Article I, § 13 turns on whether the person invoking its
 22 protection had “a reasonable expectation of privacy.” *People v. Abbot*, 162 Cal. App. 3d 635, 639
 23 (1984). This is because a “search,” within the meaning of § 13, only occurs when a government
 24 agent intrudes upon a “sphere” in which society recognizes “a reasonable expectation of privacy.”
 25 *People v. Dickson*, 91 Cal. App. 3d 409, 414 (1979).

26 42. California law, like the Fourth Amendment, applies a bright-line rule to inmate
 27 claims: “***a person incarcerated in a jail or prison possesses no justifiable expectation of***
 28 ***privacy.***” *Loyd*, 27 Cal. 4th at 1001 (emphasis added). This is because a person “detained in jail

1 cannot reasonably expect to enjoy the privacy afforded to a person in society” because the “lack of
 2 privacy is a necessary adjunct to . . . imprisonment.” *Id.* Because it is settled under California law
 3 that inmate communications do “not enjoy a justifiable expectation of privacy,” such
 4 communications may always be subjected to “official surveillance.” *Id.* at 1002. California law,
 5 like federal law, does not impede “surveillance” in any way. *Id.* at 1004, 1010.

6 43. Plaintiffs’ federal claims have not been released or dismissed with prejudice.
 7 Moreover, Plaintiffs’ Amended Complaint continues to plead state law claims that are governed
 8 by the identical tests that would govern their federal claims. Accordingly, the County continues to
 9 have “a real and reasonable apprehension that [it] will be subject to liability,” in light of the
 10 Plaintiffs’ prior and continuing accusations and conduct, the County’s Counterclaims seeking
 11 declaratory relief regarding those claims, “present[s] a justiciable case or controversy” under the
 12 Declaratory Judgment Act. *See Spokane Indian Tribe*, 972 F.2d at 1092.

13 **FIRST COUNTERCLAIM FOR DECLARATORY JUDGMENT**

14 **U.S. Constitution, Amend. IV**

15 **(Against All Plaintiffs)**

16 44. The County repeats and re-alleges each and every preceding allegation as if fully
 17 set forth herein.

18 45. A real and justiciable controversy exists between the County and Plaintiffs
 19 concerning whether the Mail Policy violates the Fourth Amendment of the U.S. Constitution as
 20 incorporated against the States by the Fourteenth Amendment.

21 46. Plaintiffs’ Original Complaint averred that the Mail Policy “violates the Fourth
 22 Amendment because it constitutes an unreasonable search and seizure of correspondence and other
 23 information in which Plaintiffs and others maintain a reasonable expectation of privacy . . .” OC
 24 ¶ 91.

25 47. This claim has not been released and Plaintiffs refused to dismiss it with prejudice.
 26 Therefore, the County has no adequate remedy at law.

27 48. “[P]risoners have no legitimate expectation of privacy”—not even in “their cells
 28 and lockers.” *Hudson v. Palmer*, 468 U.S. 517, 529–30 (1984). As a consequence, they cannot

1 “invoke the protections of the Fourth Amendment.” *Id.* And, as Judge Koh ruled, *Hudson*’s axiom,
 2 like its California law analog applied in *Loyd* and *Garvey*, “applies equally to an inmate’s
 3 incoming mail.” *Treglia v. Cate*, 2012 WL 3731774, at *3 (N.D. Cal. Aug. 28, 2012). This is
 4 because “inmates well know that their permitted communications with people outside the prison,”
 5 including “non-legal mail” are always “subject to monitoring.” *U.S. v. Yandell*, 2022 WL
 6 1607923, at *4 (E.D. Cal. May 20, 2022). Thus, as Judge Patel held, “[i]t is settled law that
 7 prisoners have no legitimate expectation of privacy in their [nonprivileged] correspondence.”
 8 *Crump v. Gomez*, 1995 WL 274359, at *2 (N.D. Cal. April 27, 1995) (citation omitted) (emphasis
 9 added). This is because the County’s security interest “justifies [the] minor burden placed on [a
 10 prisoner’s] freedom to communicate with friends and relatives.” *Id.* (citation omitted).

11 49. By reason of the foregoing, the County is entitled to declaratory judgment,
 12 declaring, adjudging, and decreeing that the Mail Policy is lawful and valid and does not violate or
 13 contravene the Fourth Amendment or the Fourteenth Amendment of the United States
 14 Constitution.

15 **SECOND COUNTERCLAIM FOR DECLARATORY JUDGMENT**

16 **California Constitution, Art. I, § 13**

17 **(Against All Plaintiffs)**

18 50. The County repeats and re-alleges each and every preceding allegation as if fully
 19 set forth herein.

20 51. A real and justiciable controversy exists between the County and Plaintiffs
 21 concerning whether the Mail Policy violates the Article I, § 13 of the California Constitution.

22 52. Plaintiffs’ Amended Complaint avers that the Mail Policy “violates Article I,
 23 Section 13 of the California Constitution because it constitutes an unreasonable search and seizure
 24 of correspondence and other information in which Plaintiffs and others maintain a reasonable
 25 expectation of privacy” Amended Complaint ¶ 90.

26 53. Like the Fourth Amendment, a claim under Article I, § 13 turns on whether the
 27 person invoking its protection had “a reasonable expectation of privacy.” *People v. Abbot*, 162
 28 Cal. App. 3d 635, 639 (1984). This is because a “search,” within the meaning of § 13, only occurs

1 when a government agent intrudes upon a “sphere” in which society recognizes “a reasonable
2 expectation of privacy.” *People v. Dickson*, 91 Cal. App. 3d 409, 414 (1979).

3 54. “Determining whether an expectation of privacy is . . . ‘reasonable’ necessarily
4 entails a balancing of interests. The two interests here are the interest of society in the security of
5 its penal institutions and the interest of the prisoner in privacy.” *Sacramento Cnty. Deputy*
6 *Sheriff’s Ass’n v. Cnty. of Sacramento*, 51 Cal. App. 4th 1468, 1480, 1485 (1996) (quoting
7 *Hudson v. Palmer*, 468 U.S. 517, 527-28 (1984)). And in jails, both the federal and the California
8 Constitutions “strike [that] balance in favor of institutional security,” because jail security “is
9 ‘central to all other corrections goals.’” *Sacramento Cnty.*, 51 Cal. App. 4th at 1480 (quoting
10 *Hudson*, 468 U.S. at 527–28).

11 55. Accordingly, California law, like the Fourth Amendment, applies a bright-line rule
12 to inmate claims: “***a person incarcerated in a jail or prison possesses no justifiable expectation***
13 ***of privacy.***” *Loyd*, 27 Cal. 4th at 1001 (emphasis added). This is because a person “detained in jail
14 cannot reasonably expect to enjoy the privacy afforded to a person in society” because the “lack of
15 privacy is a necessary adjunct to . . . imprisonment.” *Id.* Because it is settled under California law
16 that inmate communications do “not enjoy a justifiable expectation of privacy,” such
17 communications may always be subjected to “official surveillance.” *Id.* at 1002. California law,
18 like federal law, does not impede “surveillance” in any way. *Id.* at 1004, 1010.

19 56. By reason of the foregoing, the County is entitled to declaratory judgment,
20 declaring, adjudging, and decreeing that the Mail Policy is lawful and valid and does not violate or
21 contravene Article I, § 13 of the California Constitution.

22 **THIRD COUNTERCLAIM FOR DECLARATORY JUDGMENT**

23 **U.S. Constitution, Amend. I**

24 **(Against All Plaintiffs)**

25 57. The County repeats and re-alleges each and every preceding allegation as if fully
26 set forth herein.

27 58. A real and justiciable controversy exists between the County and Plaintiffs
28 concerning whether the Mail Policy violates the First Amendment of the U.S. Constitution as

1 incorporated against the States by the Fourteenth Amendment.

2 59. Plaintiffs' Original Complaint averred that the Mail Policy "violates the First
3 Amendment" because "it is not rationally related to any legitimate penological goals" and "leaves
4 not adequate alternatives to communication" OC ¶ 88.

5 60. This claim has not been released and Plaintiffs refused to dismiss it with prejudice.
6 Therefore, the County has no adequate remedy at law.

7 61. The Mail Policy complies with the First Amendment because it satisfies "the
8 standards set forth in *Turner v. Safely*," 482 U.S. 78 (1987), which governs "[r]egulations
9 regarding the review of [inmate] mail" under the First Amendment and California law. *See*
10 *Reynolds v. Rios*, 2011 WL 617424, at *2 (E.D. Cal. Feb. 10, 2011). *Turner* is "a rational-basis
11 test." *Evans v. Skolnik*, 997 F.3d 1060, 1071 n.8 (9th Cir. 2021). Under it, a "regulation is valid if
12 it is reasonably related to legitimate penological interests." *Turner*, 482 U.S. at 89. Case law
13 recognizes regulations requiring the digitization of "all incoming personal inmate mail" in order to
14 "prevent the introduction of illegal narcotics," and allowing inmates to read this mail on
15 "electronic tablets" is reasonably related to a "legitimate penological interest" as a matter of law.
16 *HRDC*, __ F. Supp. 3d __, 2023 WL 1473863, at *1-*3, *6. And the Ninth Circuit has held
17 providing "kiosks" for prisoners to review digitized copies of their mail is, for First Amendment
18 purposes, "an adequate substitute for regular distribution of paper copies." *Crime Justice & Am. v.*
19 *Honea*, 876 F.3d 966, 976 (9th Cir. 2017). Thus, the Mail Policy is "reasonably related to
20 legitimate penological interests."

21 62. By reason of the foregoing, the County is entitled to declaratory judgment,
22 declaring, adjudging, and decreeing that the Mail Policy is lawful and valid and does not violate or
23 contravene the First Amendment or the Fourteenth Amendment of the United States Constitution.

24 **FOURTH COUNTERCLAIM FOR DECLARATORY JUDGMENT**

25 **California Constitution, Art. I, § 2**

26 **(Against All Plaintiffs)**

27 63. The County repeats and re-alleges each and every preceding allegation as if fully
28 set forth herein.

64. A real and justiciable controversy exists between the County and Plaintiffs concerning whether the Mail Policy violates the Article I, § 2 of the California Constitution. Plaintiffs' Amended Complaint avers that the Mail Policy "violates Article I, Section 2 of the California Constitution" because it inhibits inmates' freedom "to express themselves" and "is not rationally related to any legitimate penological goals." AC ¶¶ 2, 89.

65. California codified prisoners' constitutional and statutory civil rights in California Penal Code § 2600, which provides that during "confinement" inmates may be "deprived of rights" if such deprivation "is reasonably related to legitimate penological interests." Section 2600 is "designed to conform California law to the decision in *Turner* [*v. Safely*, 482 U.S. 78 (1987)]." *Cnty. of Nevada*, 236 Cal. App. 4th at 1009 n.2. California's Supreme Court held § 2600 embodies ***the sum total of all "statutory as well as constitutional rights"*** enjoyed by prisoners under California law. *In re Qawi*, 32 Cal. 4th 1, 21 (2004) (emphasis added). Thus, *all* inmate free-speech claims under California law are "governed by the high court's test in *Turner*." *Thompson*, 25 Cal. 4th at 130 (2001). This includes claims under the "California constitution." *Snow v. Woodford*, 128 Cal. App. 4th 383, 389, 390 n.3 (2005).

66. Because the Mail Policy "is reasonably related to legitimate penological interests" and satisfies the *Turner* test, it does not violate California law as a matter of law.

67. By reason of the foregoing, the County is entitled to declaratory judgment, declaring, adjudging, and decreeing that the Mail Policy is lawful and valid and does not violate or contravene Article I, § 2 of the California Constitution or California Penal Code § 2600.

PRAYER FOR RELIEF

WHEREFORE, having responded to Plaintiffs and Counter-Defendants' Amended Complaint and stating their affirmative defenses, Defendants and Counterclaimants pray that the Court:

1. Award the County the declaratory relief sought by its First Counterclaim and declare, adjudge, and decree that the Mail Policy is lawful and valid and does not violate or contravene the Fourth Amendment or the Fourteenth Amendment of the United States Constitution.

1 2. Award the County the declaratory relief sought by its Second Counterclaim and
2 declare, adjudge, and decree that the Mail Policy is lawful and valid and does not violate or
3 contravene Article I, § 13 of the California Constitution.

4 3. Award the County the declaratory relief sought by its Third Counterclaim and
5 declare, adjudge, and decree that the Mail Policy is lawful and valid and does not violate or
6 contravene the First Amendment or the Fourteenth Amendment of the United States Constitution.

7 4. Award the County the declaratory relief sought by its Fourth Counterclaim and
8 declare, adjudge, and decree that the Mail Policy is lawful and valid and does not violate or
9 contravene Article I, § 2 of the California Constitution.

10 5. Award Defendants and Counterclaimants their attorneys' fees, costs, and expenses.

11 6. Award the County such other, further, and different relief as the case may require
12 and the Court may deem just and proper under the circumstances.

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14 DATED: June 23, 2023

Respectfully submitted,

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18 By: _____



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21 MATEO and CHRISTINA CORPUS
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